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8 *[Additional Counsel on Signature Page]*

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12

13 MELVYN KLEIN,  
14  
Plaintiff,  
15  
v.  
16 JOSEPH L. JACKSON, et al.,  
17  
Defendant.  
18

Case No. 18-cv-04445-JSW

**STIPULATION AND ~~PROPOSED~~**  
**ORDER OF DISMISSAL WITHOUT**  
**PREJUDICE PURSUANT TO**  
**FEDERAL RULE OF CIVIL**  
**PROCEDURE 25(A)(1)**

19 WHEREAS, on July 23, 2018, Plaintiff Melvyn Klein, then a shareholder of WageWorks,  
20 Inc. ("WageWorks"), filed this shareholder derivative case on behalf of WageWorks;

21 WHEREAS, the Court subsequently entered an order staying the case indefinitely;

22 WHEREAS, on August 30, 2019, WageWorks merged with HealthEquity, Inc. As a  
23 result of that transaction, Defendants contend Plaintiff and all other WageWorks shareholders lost  
24 standing to pursue any derivative claims as a matter of law. Plaintiff contended, however, that  
25 under Delaware law applicable to WageWorks, he had an economic interest in the derivative  
26 litigation and possessed a direct inseparable fraud claim to remedy unlawful conduct that  
occurred pre-merger.

27 WHEREAS, this claim for inseparable fraud was litigated in a separate, parallel action in  
28 *In re WageWorks Derivative Litigation*, Lead Case No. 18CIV03264, California Superior Court,

STIPULATION AND ~~PROPOSED~~  
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San Mateo County. That action was dismissed without prejudice on forum selection grounds and the dismissal was affirmed on appeal.

WHEREAS, on February 17, 2022, counsel for Plaintiff in this action filed a Suggestion of Death Upon the Record pursuant to Federal Rule of Civil Procedure 25(a), informing the Court and Defendants of Plaintiff's passing;

WHEREAS, on February 18, 2022, the parties filed a joint status report in which Defendants requested that the Court enter an order dismissing this action and closing the case pursuant to Federal Rule of Civil Procedure 25(a)(1), reasoning that because the WageWorks-HealthEquity merger extinguished the right of Plaintiff and all other WageWorks shareholders to pursue a derivative claim on WageWorks' behalf, there is no legal right or basis for any person to be substituted in Plaintiff's place;

WHEREAS, in the February 18, 2022 status report, Plaintiff's counsel stated that he was not currently aware of any shareholder other than Plaintiff or those who take under his death as potentially claiming any legal right or authority to substitute in as a plaintiff in this derivative action;

WHEREAS, since the filing of the joint status report, no shareholder or anyone taking under Plaintiff's death has claimed any legal right or authority to substitute in as a plaintiff in this derivative action and the time to do so has expired;

NOW THEREFORE, in light of the foregoing, the Defendants and Plaintiff's counsel HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. Since the filing of the joint status report on February 18, 2022, no shareholder or anyone taking under Plaintiff's death has claimed any legal right or authority to substitute in as a plaintiff in this derivative action;

2. The action is hereby dismissed in its entirety without prejudice and the case shall be closed pursuant to Federal Rule of Civil Procedure 25(a)(1).

Dated: August 26, 2022

AMY S. PARK  
O'MELVENY & MYERS LLP

By: /s/ Amy Park  
Amy S. Park

Attorneys for Defendants  
Thomas A. Bevilacqua, Bruce G. Bodaken,  
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Dated: August 26, 2022

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Catherine Kevane

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Dated: August 26, 2022

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Ignacio Salceda

Attorneys for Nominal Party  
WageWorks, Inc.

Dated: August 26, 2022

THOMAS J. MCKENNA  
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JON A. TOSTRUD  
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By: /s/ Thomas J. McKenna  
Thomas McKenna

Attorneys for Plaintiff

**~~PROPOSED~~ ORDER**

Upon the stipulation of the parties to this action, it is HEREBY ORDERED that:

1. The action is hereby dismissed in its entirety with prejudice pursuant to Federal Rule of Civil Procedure 25(a)(1).

2. The clerk shall enter ~~an~~ <sup>this</sup> order closing the case.

Dated: August 26, 2022

  
United States District Judge